IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3661 of 1990

with

CIVIL APPLICATIOON NO 858 OF 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDSINH N. MAHIDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3661 of 1990

MR ND NANAVATI for Petitioner No. 1-4

MS ARCHNA RAVAL LD AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/02/2004

ORAL JUDGEMENT

This petition is filed by the petitioner under Article 226 of the Constitution of India, challenging the notification issued by the respondent no.2. i.e. the Development Commissioner, Gujarat State, dated 21.4.1990 in exercise of powers delegated on him by the State Government. The petitioner has also challenged the legality and validity of the order passed by the respondent no.2 on 21.4.1990 in exercise of his powers under Section 310 of the Gujarat Panchyats Act ,1961 appointing the Extension Officer, respondent no.4 as Administrator of the Panchyats. The petitioner has also challenged the legality and validity of the orders passed by the respondent no.3 i.e. the Deputy Collector and Election Authority, Nadiad dated 11.4.1990 in purported exercise of his powers under Rule 18 of the Gujarat Gram and Nagar Panchyat Election Rules.

2. Civil Application No.858/93 was filed for seeking impleadment as party respondent no.5 in Special Civil Application No.3661 of 1990. This Court has passed an order dated 17.4.1993, whereby the said Civil Application was ordered to be heard along with the main petition.

3. As far as Special Civil Application No.3661 of 1990 is concerned, the Salun Gram Panchyat was duly constituted Gram Panchyat in the year 1937. The said pancyhat was comprising of local area of Vanta and Talpad since 1937. Both these areas upto the date of notification were under the control of one local self government namely Salun Gram Panchyat. The term of elected body of the Salun Gram Panchyat on the date of the filing of this petition was up to 10.11.1989 and it was extended for a further period of six months and it was to expire on 31.5.1990. The notification for the purpose of holding the election for the Salun Gram Panchyat was issued by the respondent no.3, the Election Authority and it was to be held on 13.5.1990. The petitioners have also tendered their nomination papers from the respective wards for the purpose of contesting the election, which was declared by the respondent no.3.

4. It is stated in the petition that on 11.4.1990, the respondent no.3 passed an order cancelling the notification which was issued for the purpose of holding the election of Salun Gram Panchyat in purported exercise of his powers under Rule 18 of the Gujarat Gram and Nagar Panchyat Election Rules. It is alleged that with a view to appoint administrator, this step has been taken. It was stated that the Salun Gram Panchyat has passed resolution dated 09.6.1988 not to bifurcate the Salun Gram Panchyat and Nadiad Taluka Panchyat and Executive

Committee has also passed similar resolution No.160 in its meeting dated 28.11.1988. Kheda District Panchyat had also passed a similar resolution No.463. The persons who were vitally concerned, also made separate representation recommending not to bifurcate the Salun Gram Panchyat into two separate Gram Panchyats. It was also stated in the petition that the Salun Gram Panchyat has filed Civil Suit No.196/90 before the learned Civil Judge [SD], Nadiad challenging the order passed by the respondent no.3. It was also stated that exparte charge from the present Sarpanch of Salun Gram Panchyat was taken over by the respondent no.4.

5. Ms.Nanavati, learned advocate appearing for the petitioners has submitted that the respondent authority has not followed the procedure laid down under the Act before issuance of the notification. She has further stated that no inquiry was held in respect of the resolutions passed by the Salun Gram Panchyat, Nadiad Taluka Panchyat and Kheda District Panchyat, and no justified reasons have been shown either in the notification or otherwise and no ground for separating Salun Gram Panchyat against the wish of the people, was pointed out. She has further submitted that the impugned notification was not issued for the purpose, for which it was purported to be. It was issued for certain extraneous consideration. She has further submitted that the respondent- authorities were not interested in continuing an elected body under the office and hence, though the election was declared, the same was cancelled and the impugned notification was issued. She has further submitted that the impugned actions of the respondent authorities are bad in law and against the statutory provisions and the same being contrary to the constitutional provisions, the impugned notification is required to be quashed and set aside.

6. The petition was admitted on 08.1.1992. However, interim relief was refused by the Court. Subsequently, as stated above, Civil Application was filed by one Mr.Jayantibhai Desaibhai Patel, for joining party respondent in the pending Special Civil Application, wherein as stated above, averments made to the effect that he and other persons are vitally interested in the development of the village Salun Talpad and it could be possible only when Salun Talpad Gram Panchyat as constituted by the notification impugned in the aforesaid Special Civil Application is permitted to function independently. It was further stated that the said Special Civil Application was filed by the petitioners without impleading either of the two newly constituted

Gram Panchyats or any of the residents of the said two Gram Panchyats and the people residing within the limits of two newly constituted Gram Panchayts including the leader of the said areas are interested in seeing that the legality and validity of the impugned notification is upheld by this Court. It was further stated in the application that none of them is impleaded as party to the said petition and hence, none of them has any opportunity of representing the case of the residents of the said newly constituted villages. It is further stated that the impugned notification is perfectly legal and valid and with a view to achieve development of the newly constituted Gram Panchyats, the impugned notification has been issued. It is further stated in the application that after the issuance of the impugned notification, elections have not been held so far with the result that the development of the newly constituted Gram Panchyats has come to a standstill.

From the averments made in the Civil Application, it appears that the applicant opposes and relief to be granted to the petitioners in the petition as prayed for.

7. Ms.Archna Raval, learned AGP appearing for the respondents submits that the impugned action of the respondent No.1 in issuing the notification for the purpose of bifurcation of Gram Panchyat is legislative action and this Court should not interfere with such legislative action. She has further stated that the Salun Gram Panchyat has filed Civil Suit No. 196/90 interalia challenging the orders passed by the respondent no.3 wherein the interim relief was granted. During the pendency of that suit, the present petition has been filed by the petitioners which should not be entertained by this court. She has further submitted that after making necessary consultation with the District Panchyat, and Taluka Panchyat concerned and after taking into consideration all the rules and regulations and also the popular demand of the public at large of the village, the respondent no.2 has issued the impugned notification while exercising the powers delegated on him by the State Government under the Gujarat Panchyat Act. She has therefore, submitted that the impugned notification dated 21.4.1990 issued by respondent no.2 is perfectly legal and valid and is in compliance of the provisions of the Act. She has further submitted that after taking into consideration the proposal of the District Development officer, for the purpose, the respondent no.2. has issued the impugned notification by excluding the local areas shown in column [6] of Annexure A and hew Gram Panchyats formed are shown in Column [7] of the said

Annexure A consisting of the new villages shown in column [8] of the Annexure A to this petition. She has further submitted that as the new gram Panchyats were formed and new electoral wards were to be formed and after following necessary [procedure only the election could be held in the newly formed villages. She has further submitted that even the order passed by respondent no.2. appointing the Extension Officer, respondent no.4. as Administrator of the Panchyat is also legal and valid. and hence, all the contentions raised by the petitioners in this petition challenging the same are not tenable and the petition is accordingly required to be dismissed.

8. I have heard the learned advocate Ms.Nanavati appearing for the petitioners and Ms.Archna Raval, learned A.G.P. for the respondents and I have gone through the averments made in the petition as well as pleadings made in the petition and also considered the averments made in the Civil Application. After giving my anxious thoughts to the submissions made and the contentions raised by the respective parties, I am of the opinion that the petition is required to be dismissed only on the ground that the challenge made in the present petition is against the legislative action and the Court normally refuses to entertain such challenge. The legal position is well settled by a catena of decisions holding that legislative action of the State should not be interfered with unless it is found that it is based on extraneous consideration or taken with some malafide motive. The petitioners are not in a position to substantiate their case that such an action was taken by the respondents with some malafide intention or extraneous consideration. The Court is also not inclined to grant any relief to the present petitioners also on the ground that the said petitioners have filed Civil Suit challenging the order cancelling the earlier notification for holding of election, which is also challenged in the present petition. Even otherwise, the notifications were issued in 1990 and the same have already been implemented by now and there is no valid reason to put the clock back. Considering the over all facts and circumstances of the case and the legal position, the Court while exercising it writ jurisdiction under Article 226 of the Constitution of India, does not think it fit to interfere with the impugned action of the respondents and,therefore, the petition is required to be dismissed. Accordingly, the petition is dismissed. Rule is discharged without any order as to costs.

Since the Special Civil Application is dismissed, the

Civil Application does not survive and it is accordingly disposed of.

[K.A.PUJ, J]

SNS